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March 15, 2013

To: The Honorable David Y. Ige, Chair,  
The Honorable Michelle N. Kidani, Vice Chair, and  
Members of the Senate Committee on Ways and Means

Date: Wednesday, March 20, 2013  
Time: 10:00 a.m.  
Place: Conference Room 211, State Capitol

From: Dwight Y. Takamine, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 915 Relating to Employment Security Law**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB 915 proposes to amend sections 383-33 and 383-44, Hawaii Revised Statutes, to conform to P.L. 112-40, Trade Adjustment Assistance Extension Act of 2011 (TAAEA), which requires states to:

- Charge overpaid amounts to an employer's account when an employer fails to respond timely or adequately to the department's written request for information, and
- Impose a minimum 15% penalty on individuals' fraudulent overpayments.

HB 915 also proposes to amend section 383-123(a) to allow the department to intercept federal income tax refunds for:

- Individuals with overpayments resulting from fraud or unreported earnings, and
- Employers with delinquent accounts.

The Department strongly supports this Administration measure to ensure that Hawaii's law is in conformity with federal law by October 21, 2013. In addition, the

department has committed to completing the Treasury Offset Program by March 31, 2013 because the TOP is a prerequisite for the state to qualify for future supplemental U.S.DOL funding—in 2012 states were eligible for between \$1,850,000 and \$2,200,000 in additional funding for integrity activities. Therefore, the department requests that the Legislature pass this measure before its effective date of April 1, 2013.

## **II. CURRENT LAW**

Section 383-33 holds a noncomplying employer liable for an overpayment up to the week that corrected information is received. However, federal law requires that liability extend until a determination is made by the state agency to stop paying benefits because the individual is no longer eligible for unemployment.

Section 383-44 does not impose any penalty for fraudulent overpayments.

Hawaii does not currently participate in the Treasury Offset Program (TOP) authorized under the SSI Extension for Elderly and Disabled Refugees Act in 2008 (Public Law 110-328) to permit states to recover certain unemployment debts from federal income tax refunds. In 2012, UI debt collection under TOP totaled over \$134.6 million in 20 participating states.

## **III. COMMENTS ON THE HOUSE BILL**

The U.S. Department of Labor (USDOL) has established a priority to improve the integrity of state UI programs by establishing incentives to enact certain provisions or face serious sanctions for failure to enact federal mandates.

Hawaii must participate in TOP to continue to qualify for future supplemental funding available from the USDOL. Receipt of \$13 million in administration grants allocated under section 303(a)(1) of the Social Security Act may be jeopardized if state law is not amended to include the 15% penalty on overpayments. Denial of FUTA tax offset credits for employers may result if state law does not provide for employers to be charged for overpayments they have caused.